

Meeting of 2009-3-24 Regular Meeting

MINUTES

LAWTON CITY COUNCIL REGULAR MEETING
MARCH 24, 2009 6:00 P.M.
WAYNE GILLEY CITY HALL COUNCIL CHAMBER

Mayor John P. Purcell, Jr. Also Present:
Presiding Larry Mitchell, City Manager
 Frank Jensen, City Attorney
 Traci Hushbeck, City Clerk
COL Robert Bridgford, Fort Sill Liaison

Mayor Purcell called the meeting to order at 6:00 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Councilmember Bill Shoemate, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT: Bill Shoemate, Ward One
James Hanna, Ward Two
Janice Drewry, Ward Three
Jay Burk, Ward Four
Robert Shanklin, Ward Five
Richard Zarle, Ward Six
Stanley Haywood, Ward Seven
 Doug Wells, Ward Eight

ABSENT: None

Mayor Purcell encouraged everyone to sign up for the Code Red service which alerts residents of severe weather. He stated this is a free service.

AUDIENCE PARTICIPATION: None.

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL REGULAR MEETING OF MARCH 10, 2009 AND THE SPECIAL MEETING OF MARCH 5, 2009.

Wells stated there is a correction that needs to be made in the minutes of March 10, 2009. On page four, item #17, the ordinance title should read Two Family Dwelling District.

MOVED by Hanna, SECOND by Haywood, to approve the minutes of March 5 and March 10, 2009 as corrected. AYE: Hanna, Drewry, Burk, Shanklin, Zarle, Haywood, Wells, Shoemate. NAY: None. MOTION CARRIED.

CONSENT AGENDA: The following items are considered to be routine by the City Council and will be enacted with one motion. Should discussion be desired on an item, that item will be removed from the Consent Agenda prior to action and considered separately.

Wells requested item #5 and Mayor Purcell requested items #7 and #11 be considered separately.

MOVED by Drewry, SECOND by Hanna, to approve the Consent Agenda with the exception of items #5, #7 and #11. AYE: Drewry, Burk, Shanklin, Zarle, Haywood, Wells, Shoemate, Hanna. NAY: None. MOTION CARRIED.

1. Consider the following damage claims recommended for approval and consider passage of the resolution authorizing the City Attorney to file a friendly suit for the claims which are over \$400.00: James S. Jenkins in the reduced amount of \$425.00 (**Res. 09-31**), James and Cynthia Cunningham in the amount of \$610.00 (**Res. 09-32**), Suhas and Vaidehi Agte in the reduced amount of \$2,001.66 (**Res. 09-33**) and AT&T Telephone in the amount of \$900.89 (**Res. 09-34**). Exhibits: Legal Opinions/Recommendations, Resolution No. ___, Resolution No. ___, Resolution No. ___, Resolution No. ___.

2. Consider the following damage claim recommended for denial: AT&T Telephone L.P. in the amount of \$4,864.61. Exhibits: Legal Opinion/Recommendation.

3. Consider adopting a resolution ratifying the action of the City Attorney and the City Manager in directing our third party administrator to make payment on the judgment in the Workers' Compensation case of Ronny Ahlborn in the Workers' Compensation Court, Case No. 2008-08868 R. Exhibits: **Resolution No. 2009-35**.

4. Consider continuation of contracts with the Comanche Tribe of Oklahoma for fire protection and emergency medical service on property not within the jurisdiction of the City of Lawton, located at 501 NE Laurie Tatum Road and 402 SE Interstate 44. Exhibits: Contracts on file in the City Clerk s office.

5. Consider approving an amendment to the Memorandum of Understanding between the City of Lawton and the Lawton Metropolitan Planning Organization for Congestion Mitigation Air Quality programs and projects during Fiscal Year 2009 and authorize the Mayor to execute. Exhibits: Amendment to the Memorandum of Understanding.

Wells stated when we are asking for grants we need to identify exactly where the funds are coming from and if any other programs are going to be affected by using those grant funds.

Richard Rogalski, Planning Director, stated this has to do with a change in the CMAC grant (Congestion Mitigation Air Quality) which we receive from Federal Highways. In general, the matching funds are provided by staff. The City is paying staff to do certain planning work and out of every \$100,000 that the MPO spends, \$20,000 of that is staff time. There is no additional out of pocket expense for the City. That is how we have worked for several years.

Wells stated that this is in-kind.

Rogalski stated yes, this is staff time.

MOVED by Wells, SECOND by Haywood, to approve an amendment to the Memorandum of Understanding between the City of Lawton and the Lawton Metropolitan Planning Organization for Congestion Mitigation Air Quality programs and projects during Fiscal Year 2009 and authorize the Mayor to execute. AYE: Burk, Shanklin, Zarle, Haywood, Wells, Shoemate, Hanna, Drewry. NAY: None. MOTION CARRIED.

6. Consider accepting and approving changes to the Co-Sponsorship Grant Guidelines and authorize the Mayor and City Clerk to execute the guideline changes. Exhibits: Current program guidelines and revised guidelines on file in City Clerk s Office.

7. Consider approving the standard lease agreement for use of the Elmer Thomas Park/ Lake Helen Stage area on May 15 - 16, 2009 with the Lawton/Ft. Sill Chamber of Commerce. Exhibits: Standard Lease Agreement with Lawton/Ft. Sill Chamber of Commerce is on file in the City Clerk s office.

Kim Shahan, Parks and Recreation Director, stated he would like to acknowledge those who are putting this event on. Albert Johnson, Jr. is chairman of this committee and is doing a great job. The Lawton-Fort Sill Chamber of Commerce is spearheading the whole operation. He stated this is the first time they have had a restricted contract brought before the City Council for the use of the park. In the past they have had limited access. Staff created two lease agreements for the purpose of operations when they started utilizing the park for major events. This is a restricted contract and they are actually closing the park for this event. This will allow the selling of beer, which will be a 20% payback to the City. This also allows for paid parking to be established.

Shanklin questioned if we were closing the park for pedestrian traffic.

Shahan stated no.

Drewry stated it is her understanding that the parking fees will help to offset some of the costs of the event.

Shahan stated yes.

Burk asked if the City will receive any money from the parking.

Shahan stated that is up to the City Council. The contract can be amended.

Hanna questioned who would be cleaning up the park after the event.

Shahan stated a lot of people will be involved including the U. S. Army.

Burk questioned if the City could receive 20% of the parking fees.

Shahan stated yes.

Jensen stated this contract can be amended tonight.

Shahan stated this change is acceptable to the Chamber. He stated there will be a \$10 per car fee.

Mayor Purcell announced that in conjunction with the Armed Forces Day parade, there will be an Armed Forces Day luncheon on May 15th at Fort Sill featuring General Tommy Franks.

Wells questioned where the parking areas will be located.

Shahan stated the primary parking areas will be utilized in front of the museum and the McMahon Auditorium and north of museum. He stated they estimate approximately 1,300 1,500 cars within those areas. There will be approximately 100 handicap parking spaces and those cars will not be required to pay parking fees.

Shanklin questioned when the asphalt will be laid.

Shahan stated in the next couple of weeks.

Burk questioned if the proceeds from the parking fee can be earmarked for Elmer Thomas Park.

Mitchell stated the fees will offset the cost of the event.

MOVED by Burk, SECOND by Haywood, to approve the standard lease agreement with a modification that the City of Lawton receive 20% of the parking fees collected. AYE: Shanklin, Zarle, Haywood, Wells, Hanna, Drewry, Burk. NAY: None. ABSTAIN: Shoemate. MOTION CARRIED

8. Consider allowing the Parks & Recreation Department to Co-sponsor with the Lawton Chamber of Commerce, American Legion, and the American Cancer Society a series of softball/baseball tournaments for the year 2009. Exhibits: None.

9. Consider approving contract Amendment #1 with Black & Veatch Corporation authorizing them to proceed with the design phase for the WWTP Improvement Project #2008-11 Phase I (Compliance Improvements) based upon the Study and Report which was required under a Consent Order agreement between the ODEQ and the City of Lawton. Exhibits: Amendment is on file in the City Clerk s Office.

10 Consider awarding a construction contract to Ark Wrecking Co. of Oklahoma, Inc. for the Abandoned WWTP Demolition Project #2009-3. Exhibits: None.

11. Consider approving the record plat for The Enclave, Part 2, and accepting the improvements, maintenance bonds, and money in lieu of park land. Exhibits: Plat Map. Maintenance Bonds on file in City Clerk s Office.

Rogalski stated he needs to make a minor modification in the recommended action. The applicant is developing a private park inside the subdivision and therefore does not need to provide the fee in lieu of park land. He stated the issue was resolved yesterday.

Burk questioned if the City will ever be responsible for this park.

Rogalski stated no. It is recorded on the plat as a private park to be maintained by the owners association. The streets are also private.

MOVED by Drewry, SECOND by Shoemate, to approve the record plat for The Enclave, Part 2, accepting the improvements and maintenance bonds. AYE: Zarle, Haywood, Wells, Shoemate, Hanna, Drewry, Burk, Shanklin. NAY: None. MOTION CARRIED

12. Consider a request for a revocable permit to use property owned by the City of Lawton for access to 801 East Gore Boulevard. Exhibits: Application and Site Plan.

13. Consider accepting an 8-inch waterline to serve Independence Place Apartments, escrow agreement in lieu of completion of improvements, maintenance bond, and easement. Exhibits: Location Map. Escrow Agreement, Maintenance Bond, and Easement on file in City Clerk s Office.

14. Consider awarding (CL09-037) Dewatering Polymer to Polydyne Inc. of Riceboro, GA. Exhibits: Department recommendation, abstract of bids.

15. Consider awarding (CL09-026) Dispatch Center Chairs to Scott Rice (Concept Seating, Inc.) of Oklahoma City, OK. Exhibits: Department recommendation, abstract of bids.
16. Consider extending the contract (CL08-038) Aluminum Sulfate, Liquid with Chameleon Industries, Inc. of Mesquite, TX. Exhibits: Department Recommendation, Price Sheet, Contract Extension Form.
17. Consider awarding (RFPCL09-039) Cellular Telephone Service to U.S. Cellular of Tulsa, OK. Exhibits: department recommendation, RFP and proposal packets on file at City Clerk's Office.
18. Consider approving appointments to boards and commissions. Exhibits: None.

BRAC Co-Ordination Committee

Doug Wells
1603 NW Horton Blvd.
Lawton, Oklahoma 73507

Economic Development Authority

Richard Zarle
207 SW Crystal Hill Dr
Lawton, Oklahoma 73505

Engineer Selection Committee

Doug Wells
1603 NW Horton Blvd.
Lawton, Oklahoma 73507

Investment Committee

Doug Wells
1603 NW Horton Blvd.
Lawton, Oklahoma 73507

19. Consider approval of payroll for the period of March 9 - 22, 2009.

NEW BUSINESS ITEMS:

20. Hold a public hearing and consider a resolution amending the 2030 Land Use Plan from Residential/High Density to Commercial and an ordinance changing the zoning from A-2 (Suburban District) and R-3 (Multiple-Family Dwelling District) to C-4 (Tourist Commercial District) zoning classification with a binding site plan located at 1420 SE Tower Road. Exhibits: Resolution No. 09-___, Ordinance No. 09-___, Location Map, Site Plan, Applications and Draft CPC Minutes.

Rogalski stated this tract contains 6.398 acres measuring 466.8 feet by 597.0 feet and is located approximately 700 feet south of SE Lee Boulevard (SH 7). The applicant is Buffalo Bob's RV Park, LLC, and the property owners are Robert Stevens, Pam Marion Stevens, Barry Ezerski, and Lori Parks. The proposed use is a travel trailer park.

The zoning of the surrounding area is R-3 and C-4 to the north, A-2 and R-3 to the south, R-3 to the east, and F (Floodplain District) to the west. The land use of the surrounding area is single-family residential to the north and south, commercial (Dalston Storage) and vacant to the east, and agriculture to the west. Even though this request is for more than 5 acres of land, it abuts single-family residential and therefore, a detailed site plan was required as part of the application. The site plan would become part of the ordinance if this request is approved. The site plan indicates 57 spaces for recreational vehicles, an active recreation area of 5,777 square feet, an office building, and restrooms. Travel trailer parks are regulated by Chapter 14 of the Lawton City Code. The site plan has been reviewed by License and Permits Division to ensure the proposed park meets the requirements of Chapter 14 and by the Fire Marshal.

On February 26, 2009, the City Planning Commission held a public hearing and reviewed this request. During the public hearing one person spoke in favor of the request, and no one spoke against the request. The CPC, by a vote of 5 - 0, recommended approval of the amendment to the Land Use Plan and rezoning subject to the following conditions:

Revising the site plan to provide an opaque ornamental fence or wall at least 6 feet but not more than 8 feet in height to screen the travel trailer park from the adjacent property and to list the proposed use.

Replace the existing sanitary sewer service lines currently serving the property to the east with a public sewer main or provide documentation of a permitted sewer district approved by ODEQ.

The applicant has submitted construction plans for a public sewer main, and the plans are in review. The CPC also approved a Use Permitted on Review for the travel trailer park contingent upon the approval of the rezoning to C-4 by the City Council.

PUBLIC HEARING OPENED. No one appeared to speak and the public hearing was closed.

MOVED by Haywood, SECOND by Hanna, to approve **Res. 09-36** and adopt **Ordinance 09-11** waive the reading of the ordinance, read the title only. AYE: Drewry, Burk, Shanklin, Zarle, Haywood, Wells, Shoemate, Hanna. NAY: None. MOTION CARRIED

(Title read by City Attorney)

Ordinance 09-11

An ordinance changing the zoning classification from the existing classification of A-2 (Suburban District) and R-3 (Multiple-Family Dwelling District) to C-4 (Tourist Commercial District) zoning classification on the tract of land which is hereinafter more particularly described in section one (1) hereof; approving the site plan attached as Exhibit A; and authorizing changes to be made upon the official zoning map in accordance with this ordinance.

21. Hold a public hearing and consider an ordinance closing a 10-foot easement in Lots 16 and 17, Block 4, Park Lane Addition, Part 2, also known as 4906 SE Avalon Avenue. Exhibits: Ordinance No. 09-___, Location Map, Application and Survey.

Rogalski stated on February 10, 2009, the City Council set the date of March 24, 2009 to hold a public hearing and consider an ordinance to close a 10-foot easement in Lots 16 and 17, Block 4, Park Lane Addition, Part 2, also known as 4906 SE Avalon Avenue. An Application for Closing of Public Way or Easement was submitted by the Church of Christ at Park Lane, the owner of Lots 16 and 17, Block 4, Park Lane Addition, Part 2. The church wants to expand the building to the west with a new fellowship hall. There is a 10-foot easement that runs 5 feet along the east side of Lot 16 and 5 feet on the west side of Lot 17 as shown on the attached site plan. The request is to close portions of the north/south easement that are not within the east/west easement. He stated the private utility companies and the Public Works Department have been informed of the request. No objections have been received.

Notices of the public hearing were mailed on February 20, 2009 to 23 property owners within 300 feet of this requested area, and proper notice was published in *The Lawton Constitution* on March 8, 2009. No calls or letters either for or against the request have been received.

PUBLIC HEARING OPENED. No one appeared to speak and the public hearing was closed.

MOVED by Burk, SECOND by Drewry, to adopt **Ordinance 09-12** waive the reading of the ordinance, read the title only. AYE: Burk, Shanklin, Zarle, Haywood, Wells, Shoemate, Hanna, Drewry. NAY: None. MOTION CARRIED

(Title read by City Attorney)

Ordinance 09-12

An ordinance closing a portion of a utility easement located on lots 16 and 17, block 4, Park Lane Addition, Part 2, addressed as 4906 SE Avalon Avenue, more particularly described in section one hereof.

22. Discuss City Council support for a sales tax, ad valorem, or combination of the two, for Lawton Public Schools and take appropriate action if necessary. Exhibits: None.

Wells stated that since the election he has heard two sides of this issue. He met with Mr. Beauchamp, Superintendent of Schools, to get a feel for what the school system wanted and where the City Council was on this issue. Up until the late 90 s ad valorem tax was the only way to fund their brick and mortar, operational issues, etc. The state legislature passed a law at that time which allowed them to possibly use sales tax. The citizens of Lawton did approve a sales tax in the late 1990 s for Central Junior High. He stated the City of Lawton also has the right to ask for an ad valorem tax election, but we don t ask for that very often because it is very hard to get one passed. He feels the City Council needs to let the school board or the committee know that they will support their choice of either ad valorem, sales tax or a combination of both. He hopes they will all work together to develop a plan that is viable. He stated maybe a MAPS plan like Oklahoma City developed would be a way to develop something between the school system and the city. He stated they owe it to the children to give them the best schools possible with the best technology. From what he has heard the committee formed by Lawton Public Schools was leaning one way only because they were being told that we could not support a sales tax. They need to consider sales tax as well as ad valorem tax.

Shoemate stated he would like to see them consider a quarter cent sales tax and take that money over a five year period generating about \$2.5 million. He also suggested refurbishing the schools rather than tearing them down.

He stated they need to take representatives from Lawton, Altus, Enid, Midwest City and even Duncan and go to the state capitol and make them open their eyes. He is embarrassed that Texas can get \$500 million and Oklahoma only gets thrown a bone. He can go for the quarter cent sales tax because he knows how the people in his ward

will feel about ad valorem. The main thing is that they need to get that school built. He stated they were sold a bill of goods with the state lottery.

Haywood questioned if buses could be bought with sales tax.

Hanna stated it is brick and mortar only.

Jensen stated the statute does not say that you can only build facilities, it says including without limitation. It seems clear to him.

Wells stated he hopes the City Council is involved in this decision making process and what the committee comes up with. If sales tax is one of the options, then the City Council should be supporting what the school system needs to do to take care of the children.

Drewry stated she believes that each member of the City Council is very supportive of whatever it is going to take. She stated the committee is meeting on Thursday and a group will be put together to decide how much money is necessary and how they need to go about getting it. This will come before the City Council for approval. She feels they need to give the committee a chance to come up with a plan.

Burk stated he is not going to make a decision for Lawton Public Schools. He needs them to tell him what they want.

Barry Beauchamp, Superintendent of Lawton Public Schools, stated the committee is made up of approximately 40 people that he asked from the community to come together and brainstorm on how they can put together a proper plan to take care of the school district for not just one issue, but over the long haul. The City of Lawton is represented on this committee by the Mayor and several council members. He has asked the committee to put together a program called LEAP (Lawton Educational Advancement Program), which is very similar to the MAPS program in Oklahoma City. They are hoping to put together a plan that incorporates all available funding, which would include funding from federal and state government. He stated their effort is not to build a crisis plan to take care of this one effort, it is to build an educational plan that will move this community forward and give the taxpayers a predictable tax expectation so they can understand. There would also be an oversight committee appointed to insure that these funds are expended as they should be. He stated that the MAPS program included a one cent sales tax for schools for a period of five years and generated roughly \$700 million. They have been able to alleviate their facility concerns. He stated they average 46 years of age on our buildings which are heavily used. They have currently an excess of 90 portable building and adding more is not the solution. He hopes the committee will bring a plan that best utilizes the resources that can be garnered from whatever source to accomplish what they need to accomplish for the children. With regards to the federal stimulus money, they will receive \$3.1 million for Title I, which is a reading program and \$4.2 million for special education. They cannot offset the facility issue with those dollars. They need to find the best way to utilize the tax dollars from the community. He would like to come back to the City Council at a later date with a plan and ask for the Council to act upon that plan.

Haywood questioned what one cent would generate.

Mr. Beauchamp stated approximately \$10 million a year. He stated that is a steep tax increase, but if they did this from only sales tax, that is the only way you could get to the goal of addressing the needs. He feels they can pair these up with a combination of taxes which means they would be asking for two tax issues which would mean two votes.

Shanklin stated Central Middle School was built with sales tax and they can sell it again.

Mr. Beauchamp stated he will return with something tangible that they can all discuss and move forward with.

Drewry stated she found it interesting that Lawton is at the very bottom of the school bond millage rates as compared to cities such as Oklahoma City, Shawnee, Muskogee, Guthrie and Enid. We are way below those cities.

Mr. Beauchamp stated they are talking about a range that runs from 32 mills in Jenks to a little over 8 mills in Lawton.

Hanna stated that their eyes have been opened to the fact that they can do more than brick and mortar with sales tax according to the City Attorney.

Mr. Beauchamp stated that is encouraging because that is not the way they have previously interpreted state law.

Wells stated he has only seen one, maybe two ad valorem tax issues pass for the schools. For some reason it is very

hard to get this community to raise the millage level. We have to do whatever it takes to get this done for the kids.

Drewry stated they all agree with that.

Mayor Purcell stated this issue has to pass in September. They have to show support. They must know how much Mr. Beauchamp needs and he has a good plan. It does no good to cover just the immediate needs and leave everything else out there. We don't just need to build a new school, we need to build on new rooms to get rid of the portables, and we need technology, central heat and air and roofs repaired. He stated Mr. Beauchamp has a plan in place that does not cover just the immediate needs, he has projections of what he will need over the next ten years. We need to look long range. They will have a major problem if they do part sales tax and part ad valorem and one does not pass. Whatever they come up with the entire package has to pass and if everyone does what they say they are going to do, when it comes time to renew the tax, it is not an increase, it is just a renewal.

23. Hear the appeal of Donovan Woodburn, Jr. from the decision of the Municipal Court of the City of Lawton and take appropriate action. The appeal concerns the suspension of a retail dealer's low point beer license (Hop & Sack #18, 6302 NW Cache Rd., Lawton, Oklahoma) on the basis of three sale of low point beer to minor convictions per 4-2-1-213 of the Municipal Code. Exhibits: Copies of the following documents: the Order Suspending Retail Dealer's License issued by the Municipal Court and dated the 9th day of March, 2009; the Notice of Appeal filed by Woodburn; the Notice to Revoke Retail Dealer's License issued by the Office of the City Attorney and served on Woodburn. Copies of the following Lawton Municipal Code provisions: Section 4-2-1-213, Grounds for denial, suspension or revocation of retail dealer's license, in effect on 08/22/2008; Section 4-3-1-304, Sale, barter or gift of low point beer to minor prohibited.

Jensen stated this is an appeal from an order from the Municipal Court. It is required to be heard by the City Council according to the City Code.

Steven Greb, Assistant City Attorney, stated this is an appeal of a suspension of a beer license. It is a 90 day suspension. The task is either to affirm or rescind the Municipal Court's order. Law enforcement has been called upon to help in the enforcement of prevention of access of youth to alcohol beverages and low point beer act. He stated Mr. Donovan is seeking to rescind the order that was granted on March 9, 2009 which suspended his license to sell beer within the city for 90 days. He stated on three separate occasions, three different employees, sold beer to minors. The City Attorney gave notice to Mr. Woodburn. At the hearing in February, Mr. Woodburn admitted to each allegation and told how he disciplined each employee and the steps he had taken to prevent a future occurrence. The court could have revoked the license, but instead gave him the minimum that was authorized under the code.

Shanklin questioned if our city code was more restrictive than state statute.

Greb stated the City of Lawton has the authority to issue licenses and regulate those who sell beer. The city code requires that if the license is revoked, the appeal goes to the City Council.

Shanklin questioned if anyone was fined.

Greb stated the employees were issued citations and fines were imposed.

Jensen stated this is a license hearing, not a criminal case. He is sure there were fines imposed in the criminal case. The criminal cases could have been appealed directly to the district court. This is just over the license issue which the City of Lawton regulates.

Hanna questioned if the license says non intoxicating beverage. Wouldn't that be the same as selling Coca-cola?

Jensen stated that is the old term that is now referred to as low point beer.

Hanna suggested the license be revised.

Jensen stated they have made those revisions in the city code. When they make amendments they now refer to it as low point beer.

Hanna stated that it seems it is a fallacy in the wording of the license.

David Butler, Attorney for Mr. Woodburn, stated his client owns three stores in Lawton and 30% of his sales consist of beer sales. Mr. Woodburn and his wife own eleven stores in southwest Oklahoma. They believe that there was a violation of state law when the Municipal Court entered this order. State law supersedes any law that is set by a municipality and states that you have to have a knowing and willful violation, which means if they are going to suspend Mr. Woodburn's license for the actions of his employees there has to be a willful violation. There is not a single finding in the order that there was a willful violation by his client. Title 37, the Oklahoma Alcoholic

Beverage Control Act, sets forth all laws that govern licensing of alcohol and beer sales in the state of Oklahoma and those are the laws that apply in this case. Cities can enact ordinances consistent with the act, but they cannot be more restrictive than state law. He stated the ABLE Commission can suspend or revoke the license for knowingly selling to someone under 21. There has to be hard evidence proven in a court of law that Mr. Woodburn knew his employees were selling. His client has a written policy that is signed off on by his employees. Two of these employees were terminated and one was transferred to another store. He stated one of the state statutes in Title 37 says that any municipality may initiate license revocation, but you must file a written complaint with ABLE.

That process was not followed in this case. He is also questioning why this appeal is not in district court.

Shanklin questioned if this was entrapment. How did they know that a minor bought the beer?

Mr. Butler stated he understood that they had this Operation 21 where a police officer shows up and has a minor child go in the store and buy beer. He does not understand how they can have minor kids buy beer.

Jensen stated the state authorizes it.

Mr. Butler stated there was no evidence presented that his client had knowledge of or condoned the action and the state statute is clear that there has to be a finding of willfulness. The Oklahoma Supreme Court has interpreted this. The law cannot be any clearer, his client cannot be held liable for the actions of someone when he did not know what they were doing. The whole process for revoking or suspending a license has to go through the ABLE Commission and none of those procedures were followed.

Wells questioned that after three violations Mr. Woodburn did not have some knowledge that something was going on in the store?

Mr. Butler stated the City Prosecutor did not make that argument and there was no evidence presented.

Mayor Purcell questioned under the ABLE Commission, how many times does an employee have to sell 3.2 beer to a minor that it would be proof that the owner knows something is going on? Could they do it a 100 times?

Mr. Butler stated there is not a set finite amount, it is a case by case factual determination. He stated an owner hires the best people he can, most making minimum wage, and he establishes a written policy against this action and the employee signs off and agrees with the policy. The owner cannot be at the store 24 hours a day.

Mayor Purcell questioned how many times does an employee have to do this until you can presume he has knowledge that this is going on in his store.

Mr. Butler stated there is no presumption under the law.

Wells questioned if all of the stores are having the same problem or is it just this one.

Mr. Butler stated this is the only one in which he has had his license suspended.

Wells questioned why there was no action taken against the store manager.

Mr. Butler stated he fired those employees. He does not know what more he could have done.

Shanklin questioned if there has been a fine paid.

Wells stated the three employees paid their fines. They are now talking about his license.

Mr. Butler proposed to the City Prosecutor that his client pay a fine and get this behind him.

Shanklin questioned if this will go to the court house or not.

Mr. Butler stated the way the ordinance is written, the buck stops here. Under state statute, to take someone's license, a municipality is supposed to file a request with ABLE and ABLE is supposed to conduct a hearing and then to district court.

Zarle questioned if this store is currently selling beer.

Mr. Butler stated yes. The order was stayed pending this appeal.

Jensen stated if the City Council denies the appeal, Mr. Woodburn can appeal to District Court.

Haywood stated he does have a problem because the owner is penalized for what his employees have done. Some

employees will do things on purpose to get back at their boss.

Shoemate stated he believes that Mr. Woodburn would not knowingly sell to minors and you do not know what employees will do, but he does not believe they would do this on purpose when they have to pay a fine.

Drewry questioned if this suspension was going to put him out of business.

Mr. Butler stated if you take away 30% of your income it will be hard to get by.

Drewry stated he has eleven stores. She stated that underage drinking is a very serious problem in this state and they need to get a grip.

Mr. Butler stated that there are rules that have to be followed and evidence that has to be presented and the burden is on the City.

Shanklin questioned if Geronimo would do the same thing if they caught someone selling beer to a minor? Is there a limit on population as to whether the city has that authority that would put you in the county courthouse and those judges would make that determination.

Jensen stated that we have the authority just like Geronimo to issue a license. This is about how we control and regulate our license, not a license from the ABLE Commission for liquor or anything else. This is on a license suspension.

Haywood stated he does not want any minors with liquor.

Burk stated we have to do something. They are purchasing it somewhere and they go in there with their own ID. These people either can't read or they sell it to them anyway. Kids are being killed in car wrecks and we need to take a stand.

Greb stated that Mr. Woodburn's license was not suspended pending the outcome of this appeal, so he has not been deprived of anything at this point. He stated the Oklahoma Alcoholic Beverage Control Act just controls and regulates hard liquor. Mr. Butler was correct in saying that under the Alcohol Beverage Control Act, a person who wants to sell liquor has to go to the ABLE Commission and get a license. Under the low point beer act you don't go to the ABLE Commission, you have to go to district court and get a license and then to the Oklahoma Tax Commission and get a license, and then you go to the municipality and get a license. The appeal is not to ABLE and it is not even to the Tax Commission, so the ABLE statutes do not apply. He stated if Mr. Woodburn supervised his employees, then he should be held responsible for their actions. There are three different occurrences by three different employees over a month apart. There was plenty of time for corrective action. Mr. Woodburn did not abide by state law or city code and it is very clear. The burden of proof has been satisfied.

Shanklin questioned how many fines have been paid for this violation.

Jensen stated they do not have that information.

Mr. Butler stated that they have been told that this is the first one. He stated that Mr. Woodburn must be judged on his actions, which was having a written policy in place, finding out it was violated and firing two employees and transferring the third. State law requires you have to show willful knowledge. If you are going to take someone's business away from them, you have to meet burdens and show evidence.

Donovan Woodburn, appellant, stated he has been in business in Lawton for 26 years and he does not know what more he can do other than fire the employees. He does not condone the actions of these employees. He stated if he could survive in the convenience store business, he would not sell tobacco or beer. He does not know what more he can do.

Shanklin stated Mr. Woodburn did not sell it. He has been in this situation and he has been framed but he was exonerated. This is just not fair.

Haywood stated he feels the responsibility lies with the employee. This came down from the state that if the employee is caught selling beer the owner is responsible, but the owner was not there. He believes Mr. Woodburn when he stated he did not know what was going on.

MOVED by Shanklin, SECOND by Haywood, to approve the request to rescind the order of the Municipal Court. AYE: Shanklin, Haywood, Wells (originally passed on motion), Hanna. NAY: Zarle, Drewry, Burk. ABSTAIN: Shoemate. MOTION CARRIED

Wells stated he feels the ordinance needs to be revised and there needs to be fines and notifications before it goes

to this penalty.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Shoemate suggested they put lights around Kid s Zone. He would like to suggest a 9% hotel/motel tax and possibly a sports tax on top of that. Every time he goes out of town he is paying 12%-13% and we are paying 5% here in Lawton. This could go towards bringing more activities to this community.

Mayor Purcell stated hotel/motel tax in Lawton is at 13.375%.

Drewry congratulated the Neighborhood Services Division for all the hard work that is going on with Mid-Town Square.

Shanklin stated that this issue just discussed needs to be brought back. He does not understand how we can have more authority that district court. This appeal should have gone to district court.

Drewry stated this all came up after several council members attended a meeting in Duncan to discuss underage drinking. They all agreed to do this.

Mayor Purcell stated they first agreed to three violations and then it was brought back to two.

Burk stated at some point someone has to take some responsibility. When this first came up he was on the side of the business owner. He thinks the fine should be stiffer for the employee, but he also thinks they should find a way to fine the employer. Maybe they can fine the business owner before it gets to this point.

Jensen stated the business owner did not commit the criminal violation but he holds the license. If they don t want to enforce this anymore just give him that direction, but there are more cases in the pipeline.

Chief Ronnie Smith, Lawton Police Department, stated they get a grant every year for Too Much To Lose. They send juveniles into these establishments with their ID s and if they are asked how old they are, they tell the truth. They do not take fake ID s. We still had clerks sell them beer.

Burk stated this is not a scam.

Wells stated they need to come up with an ordinance where they can come back and say that the owner had knowledge.

Burk stated this is not the only store in town that has done this. You just can t let the owner get by with saying that they just didn t know. The Council makes policies and when they have their feet to the fire, they don t do what they say they are going to do.

Haywood questioned if they could bring something back to fine the employer.

Jensen stated it would be more difficult to impose a criminal fine on an owner. It is easier with this administrative action.

Mayor Purcell stated the Council is saying that they don t care how many times this happens because they are not going to do anything if someone appeals and says they didn t know what was happening.

Wells stated that is not what he is saying.

Mayor Purcell stated that is what was done tonight.

Wells stated he does not condone this. You have a person that has been in business for years and within a two month period he gets his three times. He fires two employees and moves the other. If it is two or three months apart, he will vote for it.

Hanna stated the man stood up there four or five times and said there was no proof. The prosecutor did not have any proof. Why didn t they have any proof to back this up?

Jensen stated there was enough proof for the Municipal Judge. There were three violations. They don t have to prove the business owners knowledge under our ordinance. That is almost impossible unless those employees are going to point the finger at the owner. He gave him the minimum punishment of three months suspension. He did not revoke the license.

COL Bridgford stated they may to look at what the owner has done after one violation to mitigate these actions in

terms of their procedures. He could come back and show what he has done to satisfy some of these comments made by the Council. This may be the middle ground they are looking at.

Shoemate stated they could do the same thing to these convenient stores after the first violation and make them show the steps they are taking to prevent this from happening again.

Mayor Purcell stated based upon the action tonight, what kind of guidance do they want to give staff. If they are going to overturn the court, then they might as well stop enforcing.

Burk stated if they are not going to do anything about it then just get rid of the ordinance.

Wells stated if the owner fired the employees, what else could they expect him to do?

Burk stated he should take the 90 day suspension the judge ordered.

Haywood stated they need to move on. He questioned if there was any way they could get some additional funding for guns for the police department.

Chief Smith stated they talked about this at one time but most of the officers bought their own rifles. They are going to try to get some more through some grant money.

Mayor Purcell stated he has been requested by American Airlines to sign a letter of support.

No one objected.

Mayor Purcell stated he needs a council representative on the Library Board, Building Materials Review Committee and the Impact Fee Oversight Committee.

Shoemate volunteered for the Impact Fee Oversight Committee.

Burk agreed to serve on the Building Materials Review Committee.

Shanklin agreed to serve on the Library Board.

Jerry Ihler, Public Works Director, stated six weeks ago they brought an item to the City Council to enter into an agreement with a contractor to put a batch plant on 67th Street. The contractor decided to look at other options so the item was stricken off the agenda. The contractor did sign an agreement with a private individual for another location, but it turned out that the land was city property. He stated staff will be meeting with the contractor tomorrow and he would like to have some guidance on which location they would like to lease out if the contractor wants to stay on the city property.

The choices are the corner of 67th, about 500 feet back or the current location which is at the mile marker. The access to that site would be off of highway 62 and there are safety issues with that access.

Wells stated where the contractor is trying to go would really cause traffic problems on highway 62 because they would end up using both lanes to turn in and out. He would prefer them closer to 67th Street.

Drewry stated she would prefer they move them back 1,000 feet on that corner.

Ihler stated they will not put them where there is a site distance problem. He does not know if they can get them back 1,000 feet because they need three acres.

Shanklin questioned where Mr. Ihler would prefer to put them.

Ihler stated he would like to move them back towards 67th Street with access from 67th Street.

Council agreed.

Mayor Purcell stated on April 14th at 5:30 p.m., Congressman Tom Cole will be at Cameron for a town hall meeting. He stated there will be a chamber board planning session that will be held on April 23rd from 1:00 p.m. to 5:00 p.m. at the Trophy Room.

The Mayor and Council convened in executive session at 8:28 p.m. and reconvened in regular, open session at 8:51 p.m. Roll call reflected all members present.

BUSINESS ITEMS: EXECUTIVE SESSION ITEMS

/s/ Traci Hushbeck
TRACI HUSHBECK, CITY CLERK